IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9580 of 1994

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHORANIA HAJIBHAI AHMEDBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
Ms.Bhavika Kotecha for MR YOGESH S LAKHANI, learned counsel for Petitioner
Ms.Hansa Punani,learned AGP for Respondents

==========

CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/03/2006

ORAL JUDGMENT

1. This petition has been filed by the petitioner praying for the relief of regularisation of his services and for issuing directions to the respondents to give him the benefit of circular dated 17.10.1988 issued by the Department of Roads and Building, Government of Gujarat.

2. Briefly stated, the case of the petitioner is that he joined the service of the Forest Department as a tractor driver on daily wages on 25.6.80. He avers that since then he has been serving the department continuously for 14 years, without any break in service but his services have still not been regularised. As per the circular dated 17.10.88, referred to hereinabove, a daily-waged employee who completes continuous service of more than 5 years, is entitled to get the benefit of minimum wages, whereas the petitioner is getting only Rs.820/- per month. The various representations made by the petitioner to the authorities requesting that his services be regularised, have also fallen upon deaf ears, hence this petition.

3. I have heard Ms.Bhavika Kotecha appearing vice Mr.Yogesh Lakhani,learned counsel for the petitioner and Ms.Hansa Punani, learned AGP appearing for the respondent-State of Gujarat and have gone through the material on record. Ms.Bhavika Kotecha, learned counsel for the petitioner has submitted that even though the petitioner has completed 14 years of continuous service, he is being wrongly deprived of the benefit of regularisation. Respondents are calling for the names of candidates from the Employment Exchange on the one hand, and denying the rightful claim of the petitioner for being regularised, on the other. The petitioner, being a driver of a tractor, is regularly maintaining a Log Books which reveals that he has been working in the department for the last 14 years. As such, he is entitled to get the benefit of circular dated 17.10.88 issued by the Government regarding regularisation of services and grant of minimum wage. Reply has been filed by the respondents. Ms.Hansa Punani, learned AGP contents that the partitioner joined the services as daily-waged driver on 25.6.80

but it has denied that he was working without any break, looking to the nature of the work in the Forest Department, which is seasonal. The Circular dated 17.10.88, referred to above, cannot be made applicable to the petitioner as he was not working against any sanctioned post. Simply because the petitioner was maintaining a log book, it does not entitle him to the benefits of regular service. It is further contended that the Government Resolution dated 17.10.88 is very specific, inasmuch as it stipulates that it applies only to daily-waged employees working for maintenance of buildings and construction work under the Roads and Building Department and it does not extend to other Departments such as the Forest Department, in which the petitioner is working. Further, there are statutory rules for the appointment of Class IV cadre and such appointments can only be made by following the regular process of recruitment and no regular posts have been sanctioned by the Government of Gujarat for making such regular appointment. The respondents have examined the issue and come to the conclusion that since the work in the Forest

Department is seasonal, the daily waged employees of the Roads and Building Department, to whom the circular dated 17.10.88 pertains, cannot be equated with persons working in the Forest Department. It is further submitted that the Finance Department had also issued guidelines regarding the applicability of the Government Resolution dated 17.10.88.As such, it is submitted that the services of the petitioner cannot be regularised since the said Government Resolution does not extend to persons employed in the Forest Department and only covers those working in the Roads and Building Department.

4. It is relevant to note that a Full Bench of this Court in **2004(2) G.L.H.302 (Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat)** has examined the applicability of the Government resolution dated 17.10.88 and has come to the conclusion that since the work of daily wagers engaged in maintenance of buildings and constructions is by and large continuous and of permanent nature, unlike the work of those daily wagers who are seasonally engaged in the nurseries

for preparing seedlings, digging pits, milching, weeding, thrashing of plants,etc.,in the Forest Department, the two cannot be equated and, therefore, the stand of the Government not to extend the benefit of the Government Resolution dated 17.10.88 to daily wagers working in the nurseries of the Forest Department cannot be said to be unjust or arbitrary. However, the court has held in para 30.6 as under:

> "30.6 The Government resolution dated 17-10-1988 makes it clear that it is applicable only to the daily wagers who are working for maintenance and repairs of construction in various department of the Government including the Forests and Environment Department. We are, therefore, of the view that the Government resolution dated 17-10-1988 is applicable to the daily wagers of the Forest and Environment Department engaged in the work of maintenance and repairs of constructions in that Department and not to the daily wagers engaged in other types of work in that department. The question No.3 referred in Special Civil Application No.8289 of 1996 and 2566 of 1997 will stand answered accordingly."

5. The petitioner herein is a driver engaged in the Forest Department. Therefore, he cannot be said to be engaged in the work of maintenance and repairs of buildings and construction in that Department. As such, he cannot get the benefit of the decision of this Court in the case cited above.

6. Ms.Bhavika Kotecha, learned counsel for the petitioner, has brought to my notice a judgment of the Supreme Court reported in **AIR 1992 SC 2130 (State of Haryana v. Piara Singh)** in which the Supreme Court has observed that each State should frame a scheme, if one is not already in vogue, for regularization of ad hoc/temporary employees. Ms.Bhavika Kotecha submitted that the respondents should be given similar directions for framing a scheme in order to cover those daily-waged employees, who have been working for many years and who are not covered by the Government Resolution dated 17.10.88 and are, therefore, deprived of the benefit of regularisation.

7. In this context, the observations of the Supreme Court in State of Haryana v. Piara Singh (Supra) are reproduced herein-below:

> “25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.
>
> The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call

for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularization of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell – say two or three years – a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-90 referred to hereinbefore) both in relation to work-charged employees as well as causal labour.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad hod/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation

> by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein."

8. In the light of the above observations of the Supreme Court it is open to the respondents to frame a scheme for regularization, which would extend to those daily wagers who have worked for long years and have not yet been regularized since they are not covered by the present scheme for regularisation, as envisaged in Government Resolution dated 17.10.88. Since it is a welfare State,serious thought ought to be given to measure all daily-waged employees with the same yardstick, and frame a suitable scheme for regularisation of their services, looking to the nature of work performed by them so as not to invite the allegation of exploitation. The respondents may, therefore, positively consider this aspect and take appropriate measures in this regard. If and when such a scheme is framed and if the petitioner is eligible to get the benefits of regularization thereunder, the dismissal of this case will not,in any manner, come

in his way for availing of such benefit. However, since the relief claimed by the petitioner in the present writ petition is for regularisation as per provisions of Government Resolution dated 17.10.88, which is clearly not applicable to him, the present petition cannot be accepted. The same is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

(Smt.Abhilasha Kumari,J)

arg